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LAW OFFICES

SMITHWICK & BELENDIUK, P.C.

2033 M STREET, N.W.

SUITE 207

WASHINGTON, D.C. 20036

Federal Communications Commission
Office of the Secretary

TELEPHONE

(202) 785-2800

TELECOPIER

(202) 785-2804

March 11, 1991

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket No. 91-10 ✓
Baldwin, Florida

Dear Ms. Searcy:

Transmitted herewith, on behalf of Douglas Johnson, are an original and six copies of a Motion for Summary Judgment in the above-referenced FM proceeding.

If there are any questions with respect to this matter, please communicate with the undersigned.

Sincerely,



Arthur V. Belendiuk
Counsel for
DOUGLAS JOHNSON

Enc.
AVB/lmv.A0311

cc: Mr. Douglas Johnson

ORIGINAL
FILE RECEIVED

Before the
Federal Communications Commission
Washington, D.C. 20554

MAR 11 1991

Federal Communications Commission
Office of the Secretary

In re Application of	)	MM Docket No. 91-10
)	
Charley Cecil &	)	File No. BPH-891214MM
Dianna Mae White)	
d/b/a WHITE BROADCASTING)	
PARTNERSHIP)	
)	
PEACHES BROADCASTING, LTD.	)	File No. BPH-891214MN
)	
SAGE BROADCASTING CORPORATION	)	File No. BPH-891214MR
OF JUPITER, FLORIDA)	
)	
FIRST COAST BROADCASTING	)	File No. BPH-891214MU
COMPANY)	
)	
DOUGLAS JOHNSON	)	File No. BPH-891214MZ
)	
NORTHEAST FLORIDA	)	File No. BPH-891214NA
BROADCASTING CORP.)	
)	
JEM PRODUCTIONS, LIMITED	)	File No. BPH-891214ND
PARTNERSHIP C/O JOYCE)	
MORGAN)	
)	
For Construction Permit)	
for a New FM Station on)	
Channel 289A in)	
Baldwin, Florida)	

TO: The Honorable Edward J. Luton
Administrative Law Judge

MOTION FOR SUMMARY JUDGMENT

Douglas Johnson ("Johnson"), by counsel, and pursuant to Section 1.251 of the Commission's rules, hereby seeks summary decision on the air hazard issue specified against it in Hearing Designation Order, FCC DA 91-122, MM Docket No. 91-10, released February 11, 1991.

Contemporaneously with filing his application, Johnson notified the Federal Aviation Administration ("FAA") of the location and height of his proposed tower as well as the frequency

and power of his proposed station. Johnson's Application, FCC Form 301, p.15. The FAA determined that the proposed structure posed no physical air hazard due to tower height, but that there was a potential electro-magnetic interference ("EMI") problem. See, Attachment A, Letter from the FAA, December 17, 1990. The FAA determined that until the EMI problem was resolved, it would not issue a determination of no air hazard. Id.

The air hazard issue against Johnson is predicated on a determination that Johnson's tower site would create a potential for EMI with aeronautical navigation equipment of nearby Jacksonville International Airport. Johnson has explored the possibility of re-locating the tower, however, there is simply no place within the search area to re-locate the tower that would not yield an EMI problem. See. Attachment B, Engineering Statement from E. Harold Munn, March 6, 1991.

The EMI problem has been a subject of controversy between the Commission and the FAA.¹ However, in cases where EMI is the sole problem, the Commission has permitted the application to be granted with a condition that any harmful interference be eliminated.

Johnson hereby moves for summary resolution of the EMI air hazard issue through the imposition of the following condition upon any grant of its application:

Upon receipt of notification from the Federal Communications Commission that harmful interference is being caused by the operation of the

¹. See, e.g., Broadcasting Magazine, Interference Issue Heats Up Between FCC, FAA, at p. 58, February 18, 1991, which discusses the EMI problem.

licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce the power to the point of no interference, cease operation, or take such immediate corrective action as necessary to eliminate the harmful interference. This condition expires after one year of interference-free operation.

Just a week ago, Administrative Law Judge Arthur I. Steinberg granted two summary decision motions, deciding EMI issues in a case exactly on point.² There, two applicants with EMI air hazard issues specified against them, in a proceeding for a construction permit for a new FM channel, moved for summary decision on those issues, requesting that any grant of the construction permit be conditioned on the clause set forth above. The ALJ granted both motions, and said that specifying the clause in any potential grant of the permit, mooted the air hazard issue.

The imposition of such a condition has been previously used to resolve a similar EMI issue.³ In Texas Communications Limited Partnership, applicant Beaumont Skywave, Inc. had an EMI air hazard issue specified against it, and the FAA did not oppose the use of the conditional grant clause; the Commission eventually granted the construction permit to Beaumont, subject to the conditional clause.

A similar conclusion was reached in Roxanne Givens, FCC 89M-2754, released December 7, 1989, Attachment E, where eight applicants faced an EMI air hazard issue specified against them.

² Q Prime Inc., FCC 91M-818 2938 (ALJ March 4, 1991), Attachment C; Q Prime Inc., FCC 91M-817 2941 (ALJ March 4, 1991), Attachment D, where the ALJ sets out the clause.

³ See, Texas Communications Limited Partnership, 5 FCC Rcd 1592 (ALJ 1990), aff'd., 5 FCC Rcd 5876 (Rev. Bd. 1990).

The ALJ there decided, without naming the grantee, that the construction permit would be awarded subject to a conditional grant clause to be decided on by the Mass Media Bureau ("Bureau").⁴

Moreover, the Bureau itself has supported the use of the conditional grant clause. As recently as February 20, 1991, the Bureau has stated its willingness to accept such a clause as a condition to a construction permit where the EMI issue had been raised.⁵ The Bureau's support is also demonstrated by some earlier cases.⁶ Further, even the FAA has recommended the use of the conditional grant clause.⁷

Summary decision on the EMI air hazard issue specified against Johnson is therefore warranted. The antenna structure proposed by Johnson complies with all FAA regulations, since it will not present a physical hazard. The only air hazard concern is the

⁴ Roxanne Givens at 3.

⁵ See, Attachment F, Mass Media Bureau Comments on Motion for Summary Judgment, February 20, 1991, decided in Q Prime Inc., FCC 91M-817 2941 at 2. Accord, Attachment G, Mass Media Bureau Information Statement, December 11, 1990, where the Bureau, referencing its support in Texas Communications Limited Partnership, supported the use of a conditional clause in a Syracuse, New York FM proceeding; and, Attachment H, Mass Media Bureau's Opposition To Reconsideration, December 4, 1990, where the Bureau advocated the use of this same grant clause.

⁶ See, e.g., Donald E. Hilgendorf, FCC 88M-2420 (ALJ July 27, 1988), Attachment I; Adalai E. Stevenson, IV, FCC 89M-1162 (ALJ April 13, 1989), Attachment J.

⁷ The FAA has allowed the use of the clause in circumstances where it had previously given approval of an applicant's proposal, when it used an early version of the FAA's computer model to predict EMI, then later reversed that approval, based on a newer computer model. See, Anne M. Counihan, FAA OE Docket No. 89-AWA-OE-63 (June 8, 1990), Attachment K.

potential for EMI interference which may be adequately met through the imposition of a condition on Johnson's construction permit. That procedure has been utilized in previous proceedings and is favored by both the Bureau and the FAA.

Hence, since no material question of fact remains to be decided at hearing regarding the air hazard issue against Johnson, disposition of that issue through summary decision should be rendered.

Wherefore, in light of the foregoing, it is requested that this Motion for Summary Decision be granted and that the air hazard issue specified against Johnson be resolved in its favor through the imposition of the condition specified above.

Respectfully Submitted,

DOUGLAS JOHNSON

By: 

Arthur V. Belendiuk
His Attorney

Smithwick & Belendiuk, P.C.
2033 M Street, N.W.
Suite 207
Washington, DC 20036
(202) 785-2800

March 11, 1991

ATTACHMENT A



U.S. Department
of Transportation
**Federal Aviation
Administration**

Southern Region

P. O. Box 20836
Atlanta, Georgia 30320

December 17, 1990

E. Harold Munn, Jr. & Associates
P. O. Box 220
Coldwater, Michigan 49036-0220

Dear Mr. Munn:

This is in further response to the proposed FM antenna tower near Baldwin, Florida, Aeronautical Study Number 89-ASO-2566-OE. Specific information is as follows:

SPONSOR	:	Mr. Douglas Johnson
STRUCTURE	:	FM Antenna Tower (105.7mHz/6kW)
LOCATION	:	Baldwin, Florida
LATITUDE/LONGITUDE	:	30°22'27"N./82°01'36"W.
HEIGHTS	:	358 feet AGL, 418 feet AMSL.

The preliminary review did not reveal any obstruction standards that would be exceeded by the proposed structure, other than the potential electro-magnetic interference with respect to the Jacksonville International Airport Runway 13 localizer facility (I-CZH). Therefore, if the possible intermodulation interference problem can be resolved a determination that the proposed tower would not exceed FAR Part 77 obstruction standards could be issued.

Please let me know if you have any questions.

Sincerely,

RONALD T. NIKLASSON
Airspace Specialist
System Management Branch
Air Traffic Division

cc: FCC/ASO-220/ASO-901/ATCT JAX/

ATTACHMENT B

400
DUPLICATE COPY

ENGINEERING STATEMENT

This firm was retained to prepare this Engineering Statement concerning the allotment of FM Channel 289 (105.7 kHz) for use at Baldwin, Florida. The Federal Aviation Administration has objected to activation of this allotment by simply refusing to issue a determination of "no hazard" on the basis of possible electromagnetic interference (EMI) to the Jacksonville International Airport Runway 13 localizer facility (I-CZH), 108.9 MHz. The FAA alleges that there is a potential mix of Channel 289 with the existing operation of WCRJ-FM, Jacksonville, Fl, Channel 297C1 (107.3 MHz). The FAA postulates a mix between the Baldwin fundamental frequency and the second harmonic of WCRJ-FM.

A review has been made, moving the theoretical site for the Baldwin station a maximum distance from the city in terms of 70 dBu coverage for the city of license and in terms of distance from the I-CZH facility. Figure 1 of this report is a plot of the results of running the FAA's computer program under this assumption. Clearly it is seen that theoretical interference would result in a substantial portion of the ILS envelope.

Thus, there is no transmitter site location within the "open area" from which the required city coverage of Baldwin can be attained that does not result in theoretical interference to the referenced FAA facility.

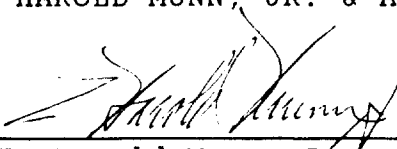
It is seen that given the extreme of relocation, the FAA EMI standard is not met, considering its assumptions. While the FAA program may be questioned (and quite properly so), it still illustrates the fact that notification must be given to that Agency of any proposed use of Channel 289 for FM broadcast service in the Baldwin area under the allotment made by the FCC.

CERTIFICATION

I hereby certify, under penalties for perjury, that the contents of this Engineering Statement are true and accurate to the best of my knowledge and belief.

E. HAROLD MUNN, JR. & ASSOCIATES, INC.

BY



E. Harold Munn, Jr., President

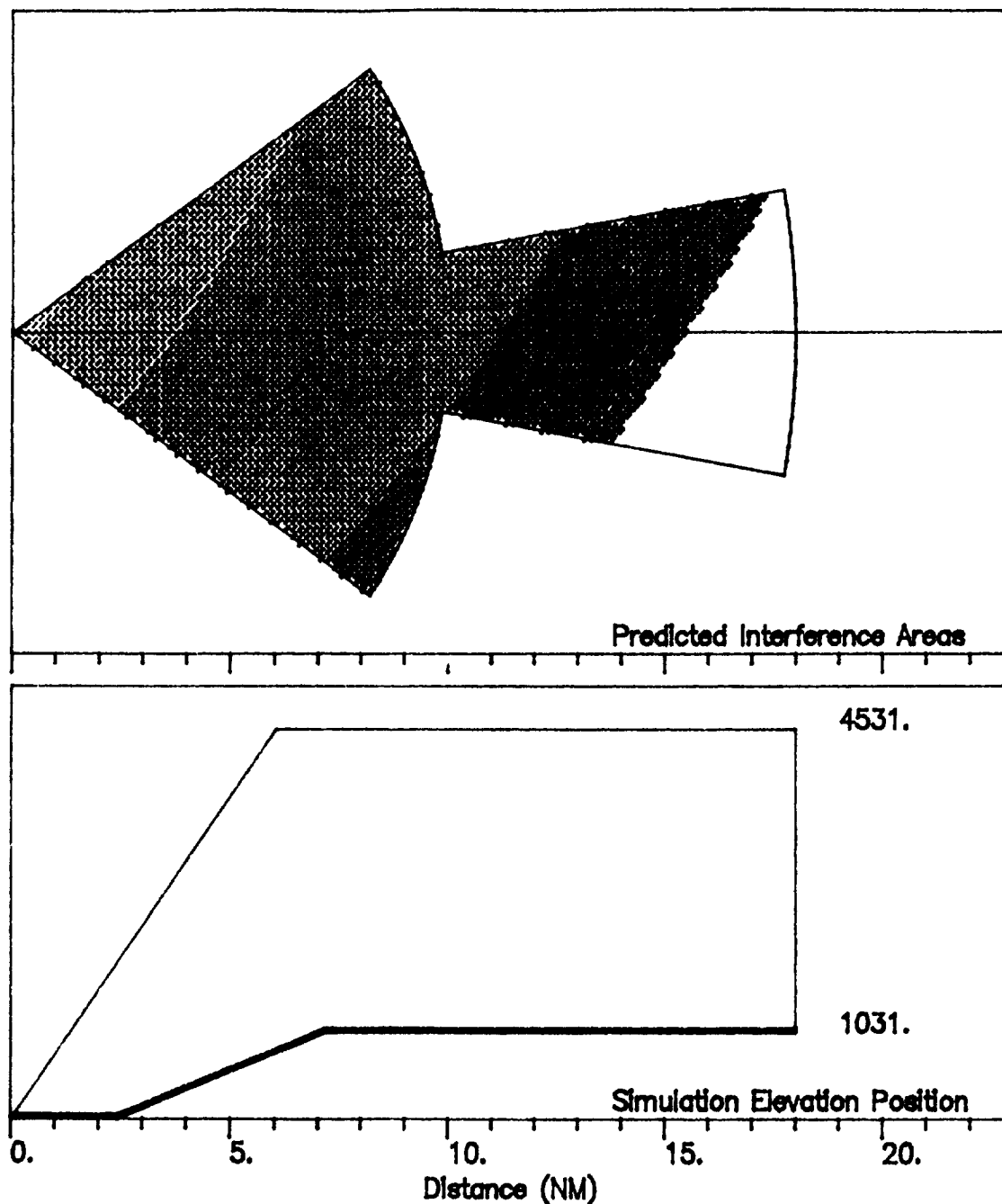
March 6, 1991

100 Airport Drive
Coldwater, MI 49036

(517) 278-7339

FIGURE 1

ALTERNATE SITE CHECK AT BALDWIN, FL. 3/5/91



Airspace case #: 89-ASO-2566-OE Site: BALDWIN FL
Date: 03/05/91 Plot filename: PROP40_.plt Service Volume Bottom
Intermodulation (B1) plot: PROP (51) & WCRJ (64)
Frequencies: PROP = 105.70 MHz WCRJ = 107.30 MHz
Navaid: CZH Frequency: 108.90 MHz Elevation (Ft. MSL): 31.
Runway heading: 131.0

ATTACHMENT C

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 91M-818
2938

In re Applications of	)	MM DOCKET NO. 90-418
)	
Q PRIME INC.	)	File No. BPH-890411MA
)	
SMITH BROADCASTING, INC.	)	File No. BPH-890412MC
)	
ATWATER KENT COMMUNICATIONS, INC.	)	File No. BPH-890412MD2
)	
COLUMBIA RIVER WIRELESS, INC.	)	File No. BPH-890412MF
)	
FLORINDA J. WEAGANT	)	File No. BPH-890412MI
)	
McCOY COMMUNICATIONS LIMITED PARTNERSHIP	)	File No. BPH-890413MA
)	
KLRK, INC.	)	File No. BPH-890413MC
)	
THOMAS M. EELLS	)	File No. BPH-890413MH
)	
CLARK BROADCASTING LIMITED PARTNERSHIP	)	File No. BPH-890413MJ
)	
BERNARD V. FOSTER	)	File No. BPH-890413MK
)	
VANCOUVER FM BROADCASTERS LIMITED PARTNERSHIP	)	File No. BPH-890413ML
)	
COLUMBIA-WILLIAMETTE LIMITED PARTNERSHIP	)	File No. BPH-890413MW
)	
COLUMBIA FM LIMITED PARTNERSHIP	)	File No. BPH-890413NH
)	
ANDREW L. BROWN & LESTER M. FRIEDMAN)	
d/b/a TRANS-COLUMBIA COMMUNICATIONS	)	File No. BPH-890413NL
)	
For Construction Permit for a)	
New FM Station on Channel 290C2)	
in Vancouver, Washington)	

MEMORANDUM OPINION AND ORDER

Issued: March 1, 1991

Released: March 4, 1991

Under consideration is an unopposed "Motion for Summary Decision" filed on February 5, 1991, by Florinda J. Weagant ("Weagant").

Weagant seeks summary decision of the air hazard issue specified against it in the Hearing Designation Order in this proceeding, 5 FCC Rcd 7160 (1990). The issue was specified because no Federal Aviation Administration ("FAA") clearance of Weagant's site had been received. On December 19, 1990, Weagant filed a petition for leave to amend, specifying a new transmitter site. The Amendment was accepted by Order, FCC 91M-176, released January 17, 1991. In support of its motion for summary decision, Weagant submits a determination from the FAA that the proposed construction would not be a hazard to air navigation.

Weagant's motion will be granted. Given the determination of no hazard, it is clear that no genuine issue of material fact remains for determination at the hearing and that Weagant is otherwise entitled to summary decision. See Section 1.251(d) of the Commission's Rules.

Accordingly, IT IS ORDERED that the Motion for Summary Decision filed by Weagant on February 5, 1991, IS GRANTED and that Issue 3 IS RESOLVED in its favor.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, reading "Arthur I. Steinberg".

Arthur I. Steinberg
Administrative Law Judge

ATTACHMENT D

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 91M-817
2941

In re Applications of	)	MM DOCKET NO. 90-418
Q PRIME INC.	)	File No. BPH-890411MA
SMITH BROADCASTING, INC.	)	File No. BPH-890412MC
ATWATER KENT COMMUNICATIONS INC.	)	File No. BPH-890412MD2
COLUMBIA RIVER WIRELESS, INC.	)	File No. BPH-890412MF
FLORINDA J. WEAGANT	)	File No. BPH-890412MI
McCOY COMMUNICATIONS LIMITED PARTNERSHIP	)	File No. BPH-890413MA
KLRK, INC.	)	File No. BPH-890413MC
THOMAS M. EELLS	)	File No. BPH-890413MH
CLARK BROADCASTING LIMITED PARTNERSHIP	)	File No. BPH-890413MJ
BERNARD V. FOSTER	)	File No. BPH-890413MK
VANCOUVER FM BROADCASTERS LIMITED PARTNERSHIP	)	File No. BPH-890413ML
COLUMBIA-WILLIAMETTE LIMITED PARTNERSHIP	)	File No. BPH-890413MW
COLUMBIA FM LIMITED PARTNERSHIP	)	File No. BPH-890413NH
ANDREW L. BROWN & LESTER M. FRIEDMAN d/b/a TRANS-COLUMBIA COMMUNICATIONS	)	File No. BPH-890413NL
For Construction Permit for a New FM Station on Channel 290C2 in Vancouver, Washington)	

MEMORANDUM OPINION AND ORDER

Issued: February 28, 1991

Released: March 4, 1991

1. Under consideration are a Motion for Summary Decision filed on February 6, 1991, by Columbia River Wireless ("Wireless"); an opposition filed on February 19, 1991, by KLRK, Inc. ("KLRK"); an opposition filed on February 20, 1991, by Florinda J. Weagant ("Weagant"); and comments in support of the motion filed on February 20, 1991, by the Mass Media Bureau.

2. Wireless seeks summary decision of the air hazard issue specified against it in the Hearing Designation Order in this proceeding, 5 FCC Rcd 7160

(1990) ("HDO"). The issue was predicated upon a determination by the Federal Aviation Administration ("FAA") that the facilities proposed by Wireless may have an adverse effect on the FAA's navigational aid facilities and cause electromagnetic interference ("EMI") with aircraft navigational receivers during final approach and landing at Portland, Oregon. HDO at para. 11. In support of its motion, Wireless states that it is willing to accept a specified condition on its construction permit which would require it, inter alia, to take corrective action should its proposal cause EMI. Wireless contends that this approach has been taken in other Commission proceedings, and that it is appropriate here.

3. KLRK and Weagant oppose summary decision of the air hazard issue arguing that it is procedurally defective, that conditioning a grant to Wireless would be unfair to other applicants whose proposals do not present EMI problems, and that material and substantial questions of fact exist. The Mass Media Bureau supports summary decision, stating that the specified condition will moot the air hazard issue.

4. Wireless's motion will be granted. Given the imposition of the condition, it is clear that the air hazard issue will become moot. KLRK's and Weagant's arguments to the contrary are unpersuasive and are rejected. Cf. Texas Communications Limited Partnership, 5 FCC Rcd 5876, 5879 (Rev. Bd. 1990). Consequently, it is concluded that no genuine issue of material fact remains for determination at the hearing, and that Wireless is otherwise entitled to summary decision. See Section 1.251(d) of the Commission's Rules.

Accordingly, IT IS ORDERED that the Motion for Summary Decision filed by Wireless on February 6, 1991, IS GRANTED, and Issue 3 IS RESOLVED in its favor.

IT IS FURTHER ORDERED that, in the event Wireless's captioned application for a construction permit is granted, such grant will be subject to the following condition:

Upon receipt of notification from the Federal Communications Commission that harmful interference is being caused by the operation of the licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce the power to the point of no interference, cease operation, or take such immediate corrective action as necessary to eliminate the harmful interference. This condition expires after one year of interference-free operation.

FEDERAL COMMUNICATIONS COMMISSION

Arthur I. Steinberg

Arthur I. Steinberg
Administrative Law Judge

ATTACHMENT E

FCC MAIL SECTION

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DEC 7 12 00 PM '89
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 89M-2754

789

In re Applications of)
ROXANNE GIVENS) MM DOCKET NO. 89-387
MINNESOTA PUBLIC RADIO) File No. BPH-871202MC
NANCY JEAN PETERSON) File No. BPH-871203MC
SOUTHWEST SUBURBAN BROADCASTING, INC.) File No. BPH-871203MF
CRIMIEL COMMUNICATIONS ASSOCIATES) File No. BPH-871203MH
LIMITED PARTNERSHIP) File No. BPH-871203MN
N. WALTER GOINS) File No. BPH-871203NE
JH BROADCAST LIMITED PARTNERSHIP) File No. BPH-871203NF
ANNE M. COUNIHAN) File No. BPH-871203NQ
COVE COMMUNICATIONS, INC.) File No. BPH-871203NT
For Construction Permit for a New)
FM Station on Channel 289A in)
Eden Prairie, Minnesota)

MEMORANDUM OPINION AND ORDER

Issued: December 6, 1989;

Released: December 7, 1989

Background

1. This is a ruling on Motion To Enlarge Issues filed on October 18, 1989, by Minnesota Public Radio ("MPR"). In its Motion, MPR seeks a form of air hazard issue against five competing applicants: Southwest Suburban Broadcasting, Inc. ("SSBI"), N. Walter Goins ("Goins"), JH Broadcast Limited Partnership ("JH"), Anne M. Counihan ("Counihan") and Cove Communications, Inc. ("Cove"). Oppositions were filed on November 1, 1989, by SSBI, Goins, Counihan and Cove. There is no record of an Opposition being filed by JH. MPR filed its Consolidated Reply on November 20, 1989. ¹

¹ Allied pleadings were filed as follows: Goins filed a Supplement on November 14, 1989; Cove filed a Supplement on November 6, 1989; and MPR filed an Errata on November 21, 1989.

Facts

2. An air hazard issue was specified in the Hearing Designation Order (DA 89-1024) against 8 applicants who had not received FAA determinations that their technical proposals would pose no hazard to air navigation. See 4 F.C.C. Rcd 6756, released September 7, 1989, at Paras. 11, 20(5). Only four of those applicants are now prosecuting their applications. However, in a subsequent development, two other applicants, Goins and Cove, received notices from FAA that their clearances were being rescinded. MPR alleges that all applicants in this case face the same Electromagnetic Interference (EMI), all are predicted to have their FAA clearances rescinded and, therefore, each should have an air hazard issue added against the respective proposals. Therefore, in addition to Goins and Cove, air hazard issues are also sought to be added against SSBI, JH and Counihan.

3. The circumstances concerning FAA's re-evaluations stem from computerized calculations for measuring interference with transmission of air navigation facilities. According to MPR's engineering expert, the five applicants succeeded in obtaining initial clearance at a time when FAA was using the so-called "Venn Diagram" analysis technique to measure the potential for interference. Apparently, it was during the pendency of the Eden Prairie applications that the FAA adopted a new procedure for evaluation which is more restrictive called the "Airspace Analysis Model." According to the MPR expert, if the proposals of the applicants who have not received air hazard determinations, or who have had their earlier positive clearances revoked under the new evaluation procedures, all will suffer the same predicted EMI problems which prevented MPR from getting its FAA clearance.

4. The FAA's objections are not based on the heights of any of the proposed facilities but are based instead on the use of Channel 289A in the Eden Prairie area. Therefore, the FAA objections would be the same for all applicants.

Discussion

5. The Oppositions have been reviewed in docket order. Also, since the same malady seems to apply uniformly to all applicants, a common solution is the most efficient way to resolve the matter rather than add litigation issues.

6. SSBI suggests in its Opposition that rather than litigate a common air hazard issue, the winning applicant should receive a construction permit that is conditioned on resolving the EMI issue with the FAA. Goins, Counihan and Cove have petitioned the FAA for review of their clearance denials which are still pending final resolution.

7. Cove also cites a letter from former Chairman Fowler to the FAA's Administrator dated July 12, 1985. The letter acknowledges that there are ongoing discussions between FCC staff and FAA staff on procedures to ensure against electromagnetic interference to air navigation communication and, as a "first step":

[T]he Commission will add limiting conditions to the authorization (Construction Permit) granted to

broadcast station applicants, to cover those conditions where the FAA considers the nature of the potential electromagnetic interference sufficient to warrant such action, to preclude creating danger to aviation safety.

See Cove Opposition at Exh. 4.

8. Understandably, MPR wishes to see all parties faced with a common issue or be relieved of the need to face the issue. Thus, as ruled at the Prehearing Conference, to the extent that MPR faces an air hazard issue based on a failure to meet FAA EMI requirements, that issue will be treated as moot. Prehearing Conference, November 21, 1989 at Tr. 21-24.

9. In its Reply pleading, MPR notes that SSBI, Goins, Cove and Counihan now have no FAA clearance and JH has defaulted on the motion. There MPR also argues in the alternative that if issues are not added against the other five applicants who, like MPR, have the same problem with EMI, then the issue against MPR should be deleted.

10. Based on the letter communication from the Chairman to FAA in 1985, and with the concurrence of all parties, including the Bureau, there will be no issues added against these five applicants. Also, in the interests of equity and efficiency, the air hazard issue against MPR will not be further prosecuted under any theory involving a failure to meet the FAA's current EMI standards. Nor will any other party face a disqualifying air hazard issue in this case that is based on a failure to meet the FAA's current EMI standards.

Ruling

Accordingly, IT IS ORDERED that the Motion To Enlarge Issues filed on October 18, 1989, by Minnesota Public Radio seeking the addition of air hazard issues against Southwest Suburban Broadcasting, Inc., N. Walter Goins, JH Broadcast Limited Partnership, Anne M. Counihan, and Cove Communications, Inc. IS DENIED.

IT IS FURTHER ORDERED that the air hazard issue cited by the Commission against Minnesota Public Radio, insofar as it is based on a failure to meet FAA EMI standards, WILL NOT BE PROSECUTED in this case.

IT IS FURTHER ORDERED that any grant of a construction permit in this proceeding to any applicant who has not satisfied the FAA's EMI standards SHALL BE CONDITIONED in accordance with terms to be submitted by the Mass Media Bureau before a final order is issued by the Presiding Judge.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Administrative Law Judge

ATTACHMENT F

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In re Applications	)	MM Docket No. 90-418
)	
Q PRIME, INC.	)	File No BPH-890411MA
)	
<u>et al.</u>)	
)	
For Construction Permit for a)	
New FM Station on Channel 290C2)	
Vancouver, Washington)	

To: Administrative Law Judge
Arthur I. Steinberg

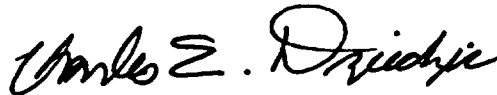
MASS MEDIA BUREAU'S COMMENTS ON
MOTION FOR SUMMARY DECISION

1. On February 6, 1991, Columbia River Wireless (Wireless) filed a motion seeking summary decision in its favor on the air hazard issue specified against it in the Hearing Designation Order in this proceeding, 5 FCC Rcd 7160 (1990) (HDO). The Mass Media Bureau hereby offers its comments in support of Wireless' motion.


2. The air hazard issue against Wireless is predicated on a determination by the Federal Aviation Administration (FAA) that Wireless' proposal would create a potential for electromagnetic interference (EMI) with aeronautical navigation equipment. To meet this issue, Wireless states that it is willing to accept a specified condition on its construction permit which would require it to, inter alia, take corrective action should its proposal cause EMI.

3. Wireless' acceptance of the condition specified in its motion for summary decision moots the air hazard issue. Consequently, there is no genuine issue of material fact to be determined at hearing and the issue should be deleted. See Section 1.251(a)(1) of the Commission's Rules.-

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau



Charles E. Dziedzic
Chief, Hearing Branch



Robert A. Zauner
Attorney
Federal Communications Commission

February 20, 1991

Certificate of Service

Michelle Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 20th day of February 1991, sent by regular United States mail, U.S. Government frank, copies of the foregoing "Mass Media Bureau's Comments on Motion for Summary Decision" to:

Greg Walden, Esq.
Chief Counsel
Federal Aviation Administration
800 Independence Avenue
Washington, D.C. 20791

Matthew H. McCormick, Esq.
Reddy, Begley & Martin
2033 M Street, N.W.
Washington, D.C. 20036

Lawrence J. Movshin, Esq.
Thelen, Marrin, Johnson & Bridges
805 15th Street
Washington D.C. 20005

Peter A. Casiato, Esq.
1500 Sansome Street, Suite 201
San Francisco, CA 94111

Howard M. Lieberman, Esq.
Arter & Hadden
1919 Pennsylvania Ave. N.W.
Suite 400
Washington, D.C. 20006

Lewis J. Paper, Esq.
Keck, Mahin & Cate
1201 New York Ave.
Washington D.C. 20005

Stanley G. Emert, Esq.
P.O. Box 107
Knowville, TN 37901

J. Jeffrey Craven, Esq.
Besozzi & Gavin
1901 L Street, N.W. Suite 200
Washington, D.C. 20036